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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to the submission of the seventh periodic report of Ecuador, adopted by the Committee at its forty-ninth session (29 October–23 November 2012)*

Specific information on the implementation of articles 1 to 16 of the Convention, particularly with regard to the Committee's previous recommendations[1]

Articles 1 and 4

1. With reference to the Committee's previous concluding observations (para. 10), please provide information about the measures undertaken by the State party in order to ensure that torture is a punishable offence under its criminal law and to ensure that the definition of torture includes, as a minimum, the elements contained in the definition set forth in article 1 of the Convention and complies with article 4.[2] If no such measures have been taken, please explain why.

Article 2[3]

2. In connection with the recommendation made by the Committee in its previous concluding observations (para. 11), please indicate what measures have been adopted in order to ensure that any person who has been deprived of his/her liberty undergoes an

* The present list of issues was adopted by the Committee at its forty-ninth session in accordance with the new optional procedure established by the Committee at its thirty-eighth session, which consists of the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their periodic reports. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

[1] Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee (CAT/C/ECU/CO/4-6 and Corr.1).

[2] See CAT/C/SR.966, para. 2.

[3] The issues raised under article 2 may also relate to other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear." See also chapter V of the same general comment.

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independent medical examination. Please also provide information on the procedures used to ensure that, in practice, all detainees are informed of the reasons for their detention, receive legal assistance without delay and are able to contact family members or any person of their choice. Please indicate what human, financial and material resources were assigned to the Public Defender Service during the period under review (para. 23).

3. With reference to the designation in 2011 of the Office of the Ombudsman as the national mechanism for the prevention of torture (para. 25), please indicate what measures have been adopted to guarantee the allocation of a sufficient budget and resources to permit the mechanism's effective operation in accordance with the requirements of the Optional Protocol to the Convention and the Guidelines on National Preventive Mechanisms.[4] Please describe the follow-up given to the recommendations made by the Ombudsman during his visits to detention centres.[5] Please specify the measures taken to disseminate the Ombudsman's reports to the general public and public officials.

4. Please provide up-to-date information on the situation regarding the draft bill on cooperation and coordination between the indigenous and ordinary justice systems (para. 20).

5. Please supply information about the steps taken to guarantee judges' and public prosecutors' full independence and impartiality following the dissolution of the Council of the Judiciary and its replacement with a transitional council in 2011. Please outline the procedure for appointing judges, the rules governing their security of tenure and the manner in which they may be dismissed from office.

Article 3

6. Please provide up-to-date information about any significant new developments in the legal and institutional framework with respect to asylum and refugee status and especially about the changes introduced by Regulation No. 1182 of 30 May 2010 in respect of the application of the right to request and receive asylum or refugee status. Has the State party considered withdrawing the requirement that persons applying for asylum must submit a police clearance certificate, as recommended by the Committee in its previous concluding observations (para. 13)?

7. Please indicate, since the consideration of the combined fourth, fifth and sixth periodic reports of Ecuador, how many persons, disaggregated by country of origin, have been granted asylum, refugee status or other forms of humanitarian protection, list the countries to which persons were returned, and indicate in which cases a decision not to return someone was based on the application of the principle of non-refoulement. Please give the reasons why returnees were sent back. Please supply up-to-date information on the existing procedures for appealing against decisions to deny asylum, refugee status or other forms of humanitarian protection and indicate whether any appeals were filed during the period under review and, if so, what their outcomes were.

8. Please indicate the number of refoulements, extraditions and expulsions carried out by the State party during the period under review on the basis of diplomatic assurances, or the equivalent, as well as the number of cases in which the State party offered such diplomatic guarantees or assurances. What are the minimum requirements in terms of the content of such guarantees and assurances, whether given or received? What subsequent monitoring was carried out in these cases?

[4] CAT/OP/12/5.

[5] See the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/17/28/Add.2), para. 84.

9. In the light of the Committee's previous concluding observations (paras. 14 and 15), please describe the measures undertaken to ensure the physical safety of asylum seekers and refugees under the State party's jurisdiction.[6] Please provide information about investigations and any related disciplinary or criminal proceedings pursued in connection with cases of abuse of refugees or asylum seekers or attacks upon them by members of the State security forces or Ecuadorian armed forces.[7] Please also provide up-to-date information on compulsory, in-service training courses for members of the armed forces and State security forces on the subjects of human rights, asylum and migration.

Articles 5, 6, 7, 8 and 9

10. Please indicate what legislative or other measures have been adopted in order to comply with article 5 of the Convention. Under Ecuadorian law, are acts of torture regarded as crimes over which the State party has an obligation to exercise universal jurisdiction, irrespective of where the act was committed and the nationality of the perpetrator or the victim? Please supply relevant examples of instances in which persons responsible for such crimes have been prosecuted.

11. Please inform the Committee about any extradition treaties concluded with other States parties and indicate whether the offences to which reference is made in article 4 of the Convention are extraditable under the terms of those treaties.

12. Please indicate what treaties or agreements on mutual judicial assistance have been concluded between Ecuador and other entities such as countries or international courts or institutions and whether they have actually led to the transfer of any evidence in connection with trials for the offences of torture or ill-treatment. Please give examples.

Article 10

13. With reference to the previous concluding observations (para. 21), please provide up-to-date information on training programmes developed by the State party in order to ensure that all public servants, especially police officers and other law enforcement officers, are fully acquainted with the provisions of the Convention and are aware that any breaches will not be tolerated and will be investigated and that perpetrators will be brought to trial. In addition, please indicate whether the State party has established a methodology for evaluating the effectiveness and impact of training programmes aimed at reducing the number of cases of torture and ill-treatment and, if so, please supply information about the nature of this methodology and its application.

14. Please supply information about any investigations that may have taken place as a result of the circulation in January 2012 of a video showing a group of trainee police officers being ill-treated and humiliated by instructors in a training academy in the province of Manabí.

15. Please supply up-to-date information regarding training programmes for judges, public prosecutors, forensic doctors and other medical staff who deal with detainees in the detection and documentation of the physical and psychological after-effects of torture. Do these programmes specifically include instruction regarding the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)?

[6] Ibid., paras. 1 to 12.
[7] Ibid., paras. 13 to 18.

Article 11

16. Please provide up-to-date information, including statistics disaggregated by sex, age and ethnic origin or nationality, on the number of persons in pretrial detention and the number of convicted prisoners and on the occupancy rate of all places of detention. With reference to the Committee's previous concluding observations (para. 22), please assess the effectiveness of the measures adopted to alleviate overcrowding in the State party's prisons. What efforts has the State party made to increase the availability of health-care resources in its prisons?

17. Please provide statistics on deaths in custody during the period under review, disaggregated by sex, age and ethnic origin or nationality of the deceased, place of detention and cause of death. Please provide detailed information on the outcome of investigations into these deaths and the measures taken to prevent the recurrence of similar cases. Please indicate whether compensation was paid to relatives in any of these cases.

18. Please supply information on the frequency of inter-prisoner violence and, in particular, on all such cases in which law enforcement personnel may have been negligent. Please indicate how many complaints have been lodged in this respect. What preventive measures have been introduced?

Articles 12 and 13

19. Please supply statistics, disaggregated by age, sex, ethnic origin or nationality and place of detention, on the number of complaints of acts of torture or ill-treatment recorded during the period under review. Please include information on investigations, disciplinary and criminal proceedings, sentencing and the criminal or disciplinary penalties imposed.[8] How many cases concerning torture or ill-treatment were reopened during the period under review on the basis of Ministerial Agreement No. 1435, issued by the Ministry of the Interior on 9 June 2010 (para. 16)? What measures have been taken to reduce the high rate of impunity, especially for offences such as homicide, in the light of the concerns expressed in that respect by the Special Rapporteur on extrajudicial, summary or arbitrary executions.[9]

20. With reference to the Committee's previous concluding observations (para. 16), please describe the measures undertaken to establish an independent, external oversight mechanism to examine complaints of torture or ill-treatment at the hands of law enforcement officials. Please also describe the steps taken to ensure the independence of the internal complaints system available to persons who have been deprived of their liberty.

21. Please provide up-to-date information on the actions taken by the Prosecutor-General's Office in respect of cases of torture, especially those involving acts of sexual violence, enforced disappearances or extrajudicial, summary or arbitrary executions documented by the Truth Commission in its final report of 7 June 2010. In addition, please include information about investigations, disciplinary and criminal proceedings, sentences and the criminal or disciplinary penalties applied.

22. Please say what has been done to rectify the serious defects in the witness protection programme pinpointed by the Special Rapporteur on extrajudicial, summary or arbitrary executions.[10]

[8] Ibid., paras. 65 to 77.
[9] Ibid., paras. 65 to 90.
[10] Ibid., paras. 78 to 82.

23. In the light of the previous concluding observations (para. 18), please provide up-to-date information about the measures adopted by the State party to prevent and combat the abuse of and sexual violence against minors in educational establishments. Please include statistics on the number of complaints received and investigated and the number of prosecutions and sentences handed down in those cases.

24. With reference to the Committee's recommendation on the subject in its previous concluding observations (para. 19), please provide statistics, disaggregated by the victims' sex, age and ethnic origin or nationality, of the number of victims of mob justice during the period under review. Please include a review of the causes of these incidents and information about the prosecution of the suspected perpetrators.[11] In addition, please include information on the steps taken to investigate complaints of abuses committed by rural defence networks and to bring the perpetrators of such acts to trial.[12]

25. Please supply information regarding any investigations carried out into complaints of involuntary placement and ill-treatment of women in private drug addiction treatment centres, including those which practice "sexual reorientation" therapies.

Article 14

26. Further to the request for information contained in the previous concluding observations (para. 24), please provide statistics and full details on all the measures of redress and compensation, including rehabilitation measures, ordered by the courts and actually received by victims of torture or members of their families since the consideration of the previous periodic report. This information should include the number of complaints submitted, the number of complaints accepted and the amounts granted and actually paid in each case. In addition, please supply up-to-date information on the current status of the bill for reparation of victims proposed by the Truth Commission (para. 17 (b)).

27. Please provide information on reparation programmes and the redress they provide, including the treatment of physical and psychological trauma and other forms of rehabilitation received by victims of torture and ill-treatment, and on the steps taken to allocate sufficient resources to ensure the efficient operation of these programmes. How much cooperation takes place in this sphere with specialized non-governmental organizations? Does the Government provide financial or other forms of support to such organizations to help them to carry out their work effectively?

Article 15

28. What specific measures have been taken to ensure that the principle of the inadmissibility of evidence obtained through torture is observed in practice? Please give examples of cases where courts dismissed cases because evidence had been submitted that had been obtained through torture or ill-treatment.

Article 16

29. With reference to the Committee's previous concluding observations (para. 12), please describe the measures adopted by the State party to ensure the physical safety of the members of the national network of forensic experts. Include information about the findings of the investigation into the murder of the forensic doctor Germán Antonio Ramírez Herrera and about any criminal proceedings that have taken place in that connection.

[11] Ibid., paras. 52 to 59.
[12] Ibid., paras. 43 to 51.

30. Please comment on reports indicating that there has been an increase in the number of acts of intimidation and violence directed at journalists, human rights defenders and their families and that most of these acts have been committed by government officials.[13] Please also comment on the complaints concerning unfounded accusations, arbitrary detention and the imposition of excessively heavy fines on indigenous and peasant leaders following their participation in protests in 2009 and 2010 against changes in policy and legislation regarding the exploitation of natural resources. In particular, please provide information on the legal situation of the indigenous leaders Marlon Santi and Delfín Tenesaca, who have been under investigation for two years on suspicion of terrorism.

31. What steps has the State party taken to prohibit corporal punishment by law and to apply that prohibition in all settings (para. 18 (h)).

Other issues

32. Further to the request for information contained in the previous concluding observations (para. 26), please report to the Committee on the fulfilment by Ecuadorian armed forces deployed abroad on peacekeeping missions with their obligations under the Convention.

33. Please provide up-to-date information on the measures adopted by the State party to respond to the threat of terrorism and on how these measures have affected the de jure and de facto human rights safeguards that are in place and how the State party has ensured that its counter-terrorism measures are in keeping with its obligations under international law, especially the Convention.[14] Please describe the relevant training given to law enforcement officers, the number and types of convictions handed down under such legislation, and the de jure and de facto safeguards and legal remedies available to persons subject to antiterrorist measures. Please indicate whether there have been any complaints of non-observance of international standards and what the outcomes of those complaints have been.

General information on the human rights situation in the State party, including information on new measures and developments relating to the implementation of the Convention

34. Please provide detailed information on new developments concerning the legal and institutional framework for the promotion and protection of human rights at the national level since the combined fourth, fifth and sixth periodic reports were submitted in November 2010. Include information on any relevant judicial decisions.

35. Please provide detailed information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the submission of the previous periodic report, including information on any national human rights plans or programmes, the resources allocated for them, and the corresponding means, objectives and results.

[13] Ibid., paras. 60 to 64.

[14] See S/2001/1327, S/2002/885, S/2003/788, S/2004/664 and S/2008/314.

36. Please provide any other information on new measures undertaken and any other developments in connection with the implementation of the Convention and the Committee's recommendations since the consideration of the previous periodic report. Please include the corresponding statistics and other information on any other events that may have occurred in the State party which are of relevance to the Convention.